MONTANA LEGISLATIVE HISTORY

Chapter 389 ~~19~~ 2003

Bill H 358 S _____ Original bill & history X C

H. Committee on JUDICIARY			S. Committee on JUDICIARY		
Hearing Date(s)	1/28	X C	Hearing Date(s)	3/24	X C
EXEC ACTION	2/13	X C		3/25	X C
		C		3-27	C
		C		4-1	C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Bill Draft Number: LC1893
Bill Type - Number: HB 358
Short Title: Revise laws governing municipal and justice courts
Primary Sponsor: Michael Lange

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 58

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/18/2003			
(H) Signed by Governor	04/18/2003			
(H) Transmitted to Governor	04/12/2003			
(S) Signed by President	04/11/2003			
(H) Signed by Speaker	04/11/2003			
(C) Sent to Printing	04/11/2003			
(C) Sent to Printing	04/10/2003			
(H) Returned from Enrolling	04/10/2003			
(H) Sent to Enrolling	04/09/2003			
(H) 3rd Reading Passed as Amended by Senate	04/09/2003	90	9	
(H) Scheduled for 3rd Reading	04/09/2003			
(H) 2nd Reading Senate Amendments Concurred	04/08/2003	86	13	
(H) Scheduled for 2nd Reading	04/08/2003			
(S) Returned to House with Amendments	04/05/2003			
(S) 3rd Reading Concurred	04/05/2003	35	14	
(S) Scheduled for 3rd Reading	04/05/2003			
(S) 2nd Reading Concurred	04/04/2003	27	7	
(S) Scheduled for 2nd Reading	04/04/2003			
(C) Sent to Printing	04/01/2003			
(S) Committee Report--Bill Concurred as Amended	04/01/2003			(S) Judiciary
(S) Committee Executive Action--Bill Concurred as Amended	04/01/2003	9	0	(S) Judiciary
(S) Hearing	03/24/2003			(S) Judiciary
(S) Referred to Committee	02/26/2003			(S) Judiciary
(S) First Reading	02/26/2003			
(H) Transmitted to Senate	02/24/2003			
(H) 3rd Reading Passed	02/24/2003	82	16	
(H) Scheduled for 3rd Reading	02/24/2003			
(C) Sent to Printing	02/21/2003			
(H) 2nd Reading Passed as Amended	02/21/2003	77	20	

(H) 2nd Reading Motion to Amend Carried	02/21/2003	85	11	
(H) Scheduled for 2nd Reading	02/21/2003			
(H) Scheduled for 2nd Reading	02/20/2003			
(H) Scheduled for 2nd Reading	02/19/2003			
(H) Fiscal Note Printed	02/18/2003			
(H) Fiscal Note Received	02/17/2003			
(C) Sent to Printing	02/14/2003			
(H) Committee Report--Bill Passed as Amended	02/14/2003			(H) Judiciary
(H) Revised Fiscal Note Requested	02/13/2003			
(H) Committee Executive Action--Bill Passed as Amended	02/13/2003	17	1	(H) Judiciary
(H) Fiscal Note Printed	01/28/2003			
(H) Hearing	01/28/2003			(H) Judiciary
(H) Fiscal Note Received	01/27/2003			
(C) Introduced Bill Text Available Electronically	01/17/2003			
(H) Referred to Committee	01/17/2003			(H) Judiciary
(H) First Reading	01/17/2003			
(H) Fiscal Note Requested	01/17/2003			
(H) Introduced	01/17/2003			
(C) Draft Delivered to Requester	01/15/2003			
(C) Draft Ready for Delivery	01/14/2003			
(C) Draft in Assembly/Executive Director Review	01/13/2003			
(C) Draft in Final Drafter Review	01/13/2003			
(C) Draft in Input/Proofing	01/13/2003			
(C) Bill Draft Text Available Electronically	01/13/2003			
(C) Draft to Drafter - Edit Review [CMD]	01/13/2003			
(C) Draft in Edit	01/13/2003			
(C) Draft in Legal Review	01/13/2003			
(C) Draft to Requester for Review	01/07/2003			
(C) Draft Request Received	01/04/2003			

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Lange	Michael	
Drafter	Petesch	Greg	
Primary Sponsor	Lange	Michael	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Cities and Towns (see also: Local Government)		Simple	CIT
Counties (see also: Local Government)		Simple	CTY
Courts (see also: Judges and Justices; Juries and Jurors)		Simple	CORT

Additional Bill Information

Probable Fiscal Note: Yes
Preintroduction Required: N
Session Law Ch. Number: 389
DEADLINE
Category: General Bills
Transmittal Date: 02/28/2003
Return (with 2nd house amendments) Date: 04/05/2003

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-JUL-03	

HOUSE BILL NO. 358

INTRODUCED BY M. LANGE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR MUNICIPAL COURT JUDGES; ALLOWING FIRST-CLASS COUNTIES TO ESTABLISH JUSTICES' COURTS AS COURTS OF RECORD TO BE KNOWN AS COUNTY COURTS; PROVIDING THAT THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A COUNTY COURT ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS FROM A COUNTY COURT ARE ON THE RECORD AND NOT DE NOVO; PROVIDING FOR THE RETENTION OF CERTAIN MONEY BY THE COUNTY TO ASSIST IN FUNDING A COUNTY COURT; AUTHORIZING A MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A COUNTY COURT TO ACT AS A JUDGE PRO TEMPORE IN A DISTRICT COURT; PROVIDING A GRANDFATHER CLAUSE FOR EXISTING JUSTICES OF THE PEACE; AMENDING SECTIONS 3-5-114, 3-6-102, 3-6-202, 3-6-204, 3-10-101, 3-10-203, 3-10-204, 3-10-207, 3-10-601, 25-33-301, 46-17-311, AND
MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

(1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;

(2) a retired judge of the district court;

(3) a justice of the peace for a county court, provided for in 3-10-101;

(4) a municipal court judge; or

~~(3)~~(5) a retired justice of the supreme court."

Section 2. Section 3-6-102, MCA, is amended to read:

"3-6-102. Abolition of city court. (1) In cities in which a municipal court is established, the office of city judge is abolished.

(2) Except as provided in 3-6-101(2), a city judge whose office is abolished shall serve as a municipal court judge in the same city in which ~~he~~ the judge served as city judge for the remainder of ~~his~~ the judge's term and until the office of municipal court judge is filled by election, as provided under 3-6-201 ~~and 3-6-202~~."

Section 3. Section 3-6-202, MCA, is amended to read:

"3-6-202. Qualifications -- certification -- training. (1) A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the ~~1972~~ Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least ~~2~~ 3 years prior to the date of appointment or election.

(2) A municipal court judge ~~must be a resident and voter in the city in which he is elected at the time of his election~~ shall reside in the county in which the court is located and shall meet the residency requirements provided in 3-10-204.

~~(3) A municipal court judge must be certified as provided in 3-1-1502 or 3-1-1503 prior to assuming office.~~

~~(4) There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed municipal court judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided for in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed municipal court judge for attending the sessions by the city in which he holds or will hold court and must be charged against that city.~~

~~(5) Each municipal court judge shall attend the training sessions provided for in subsection (4). Failure to attend disqualifies a judge from office and creates a vacancy in the office. However, the supreme court may excuse a municipal court judge from attendance because of illness, a death in the family, or any other good cause.~~

(3) The commission on courts of limited jurisdiction, upon finding compliance with subsections (1) and (2), shall issue a certificate, as required in 3-1-1502, prior to the municipal court judge assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.

(4) A municipal court judge shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.

(5) Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (4).

(6) A municipal court judge is entitled to reimbursement for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.

(7) On or before December 31 of each year, a municipal court judge shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a municipal court judge or declare a vacancy in the office of the judge for failure to meet the training requirements established in this section."

Section 4. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification -- judge pro tempore. When a judge of a municipal court has been disqualified or is sick or unable to act, ~~he~~ the judge shall call in a justice of the peace for a county court provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a county court, a retired municipal court judge, or ~~some practicing~~ an attorney of the county in which ~~his~~ the court is located~~, who shall be~~ to act as a judge pro tempore. The judge pro tempore ~~with~~ has the same ~~powers for the purposes of the cause~~ power and authority as the municipal court judge ~~of the court~~."

Section 5. Section 3-10-101, MCA, is amended to read:

"3-10-101. Number and location of justices' courts -- authorization to combine with city court -- county court. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice's court.

(2) The board of county commissioners of each county of the state may establish:

(a) one additional justice's court located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the

board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) In a county of the first class, as provided in 7-1-2111, the county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a county court and, in addition to the provisions of this chapter, is also subject to the provisions of [sections 10 through 12]. A county court may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

Section 6. Section 3-10-203, MCA, is amended to read:

"3-10-203. Orientation course -- annual training. (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ must be paid to the elected or appointed justice of the peace for attending the course by the county in which ~~he~~ the justice of the peace holds or will hold court and ~~shall~~ must be charged against that county.

(2) ~~There shall~~ Subject to subsection (4), there must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ must be paid to the elected or appointed justice of the peace for attending the sessions by the county in which ~~he~~ the justice of the peace holds or will hold court and ~~shall~~ must be charged against that county.

(3) ~~Each~~ Except as provided in subsection (4), each justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies ~~him~~ the justice of the peace from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

(4) A justice of the peace for a county court, provided for in 3-10-101, must meet the requirements provided for in [section 12]."

Section 7. Section 3-10-204, MCA, is amended to read:

"3-10-204. Residence requirements. (1) ~~Every~~ Each justice of the peace ~~must~~ shall reside in the county in which ~~his~~ the justice's court is held.

(2) ~~No~~ A person is not eligible ~~to~~ for the office of justice of the peace unless ~~he shall have~~ the person has been a citizen of the United States and a resident of the county in which ~~he~~ the person is to serve for 1 year ~~next~~ preceding ~~his~~ the person's election or appointment.

(3) Subject to [section 15], the justice of the peace for a county court, provided for in 3-10-101, must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the Montana constitution, except that a justice of the peace for a county court need only be admitted to the practice of law in Montana for at least 3 years prior to the date of election or appointment."

Section 8. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) ~~The~~ Subject to subsections (2) through (4), the board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504(1).

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

(4) The salary of the justice of the peace for a county court may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

Section 9. Section 3-10-601, MCA, is amended to read:

"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees. (1) Each justice's court shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) Except as provided in subsection (4), all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title

45, chapter 9 or 10.

(3) (a) Except as provided in 46-18-236(7) and subsection (3)(b) of this section, the county treasurer shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:

~~(a)~~(i) 50% to the department of revenue for deposit in the state general fund; and

~~(b)~~(ii) 50% to the county general fund.

(b) If the county has established a county court as provided in 3-10-101, then the expenses of the county court provided for in 3-10-103, the salaries of the justices of the peace for the county court as provided for in 3-10-207, and the expenses provided for in 3-10-209 must be deducted by the county treasurer before making the distributions provided for in subsection (3)(a).

(4) (a) The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court.

(b) In the event that a private person or entity is retained to collect a judgment, the justice's court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute a suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment."

NEW SECTION. **Section 10. Appeal to district court from county court -- record on appeal.** (1) A party may appeal to district court from a county court judgment or order. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a county court to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals from the county court to district court.

NEW SECTION. **Section 11. Disqualification of justice of peace for county court -- judge pro tempore.** When a justice of the peace for a county court has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a county court, a municipal court judge, a retired justice of

the peace for a county court, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice of the peace for the county court.

NEW SECTION. **Section 12. Minimum judicial education requirements -- justice of peace for county court.** (1) The commission on courts of limited jurisdiction, upon finding compliance with 3-10-204(3), shall issue a certificate, as required in 3-1-1502, prior to the justice of the peace for a county court assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.

(2) A justice of the peace for a county court, provided for in 3-10-101, shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.

(3) Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (2).

(4) A justice of the peace for a county court is entitled to reimbursement for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.

(5) On or before December 31 of each year, a justice of the peace for a county court shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a justice of the peace for a county court or declare a vacancy in the office of the justice of the peace for failure to meet the training requirements established in this section.

Section 13. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo -- pleadings~~,~~ -- conduct of trial. (1) ~~All~~ Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on ~~such~~ terms ~~as may be~~ that are just, ~~allow~~ allows other or amended pleadings to be filed in ~~such~~ the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials

in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court established as a county court pursuant to 3-10-101 is on the record as provided in [section 10]."

Section 14. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a county court is governed by [section 10].

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice's court, other than a county court, or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure."

NEW SECTION. **Section 15. Grandfather clause.** An incumbent justice of the peace on [the effective date of this act], in a county in which a county court is established, who meets the minimum education requirements for a justice of the peace is eligible to run for the justice of the peace for a county court in that county at the next and subsequent elections held for the justice of the peace for the county court unless the justice of the peace has a break in service.

NEW SECTION. **Section 16. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 17. Codification instruction.** [Sections 10 through 12] are intended to be codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [sections 10 through 12].

NEW SECTION. **Section 18. Effective date.** [This act] is effective July 1, 2003.

- END -

FISCAL NOTE

Bill #: HB0358 **Title:** Revise laws governing municipal and justice courts

Primary Sponsor: Lange, M **Status:** As Amended in House Committee

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
General Fund	$0	$0
Revenue:		
General Fund	$0	$0
Net Impact on General Fund Balance:	$0	$0

☒	Significant Local Gov. Impact	☒	Technical Concerns
☐	Included in the Executive Budget	☒	Significant Long-Term Impacts
☐	Dedicated Revenue Form Attached	☐	Needs to be included in HB 2

Fiscal Analysis

1. This bill revises training requirements for municipal court judges (Section 3) and justices of the peace (Section 10). In both sections, judges and justices of the peace are to be reimbursed for actual and necessary expenses and costs incurred in attending continuing judicial or legal education courses. Reimbursement will come from the appropriate local government.
2. In first class counties (as provided in 7-1-2111, MCA) a justice court would be established as a court of record and subsequently considered a county court.
3. A court of record is a court that maintains court-reporting equipment/personnel and provides transcription of cases heard before the court. In general, justice courts do not provide court-reporting services.
4. Converting a court of limited jurisdiction to a court of record is an expensive change. Amounts for this conversion are not available at this time. They could be obtained by a request for proposal.
5. The board of county commissioners would be the deciding party for which courts in first class counties would be converted to county courts (from courts of limited jurisdiction to courts of record).
6. Section 8 prescribes the appeal process for county court judgments to the District Court. The appeals do not need to be tried anew, which may reduce the number of appeals before a jury in District Courts.
7. The cost of providing the records on appeal (transcripts and all papers filed in the action) is assumed to be at the cost of the county.

8. Each District Court judge maintains a docket of cases awaiting action in a court. The number of jury trials per year will remain materially constant.
9. As amended, there is no fiscal impact to the state as a result of this bill.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
As stated in assumption #4, the costs of converting a court of limited jurisdiction to a court of record is an expensive change, but both the amounts to convert a single court and the number of courts that will be converted are unknown at this time. As amended (deletion of section 9, amending 3-10-601, MCA), the costs for these conversions are the responsibility of the counties.

TECHNICAL NOTES:
Section 3 and Section 10 do not reference who is responsible for reimbursement of training, although Section 6, which amends 3-10-203, MCA, indicates the county is responsible for justice of the peace training. It may be helpful to clarify that reimbursement will come from the appropriate local government.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 28, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 362, 1/22/2003; HB 350, 1/22/2003; HB 358, 1/22/2003; HB 294, 1/22/2003

responded that law enforcement would require some residue to qualify as paraphernalia, such as in a pipe. He emphasized that unless there is residue or other drugs, it would not be considered paraphernalia.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 39}

Closing by Sponsor:

REP. COHENOUR closed on HB 350 stating that things have changed in Montana since 1943. She explained that in the Commission of the highway patrol's duties, they do often run across these dangerous drugs and precursors. She stated it takes more than seeing a blender in a car to qualify as paraphernalia. The officer must find residue, or drugs, in order to determine whether it is paraphernalia.

{Tape: 1; Side: B; Approx. Time Counter: 40 - 77}

HEARING ON HB 358

Sponsor: REP. LANGE, HD 19, Billings

Opening Statement by Sponsor:

REP. LANGE opened on HB 358, stating that it allows counties to streamline cases, eliminate the number of appeals, and provide speedy trials. He explained that this bill would revise the qualification and training requirements for municipal judges. He stated that it would allow first-class counties to establish justice courts, as courts of record. He remarked that these would be called county courts. He stressed that the qualifications and training requirements for a justice of the peace (JP), serving in a county court, are the same as that of a municipal judge.

{Tape: 1; Side: B; Approx. Time Counter: 78 - 120}

Proponents' Testimony:

Judge Larry Herman, Attorney, Billings, supported HB 358, stating it would save costs to the cities and counties. He explained this bill would give a protection in terms of a record being kept for all who appear in the Municipal Court. He stated the Billings justice and municipal courts hear over 45,000 filings a year. He emphasized that, at present, many cases are plead that should not be.

EXHIBIT(juh18a02)

{Tape: 1; Side: B; Approx. Time Counter: 121 - 352}

Harris Himes, Attorney, supported HB 358. He stated that mediation is used to smoke out the other side and is generally a waste of time. He felt that mediation has no force or effect in law and costs people time and money.

{Tape: 1; Side: B; Approx. Time Counter: 353 - 390}

Opponents' Testimony:

Harold Blatty, Assistant Director of Montana Association of Counties, opposed HB 358, stating it would be a slippery slope in the area of classifications and salaries. He explained the juris doctorate degree requirement for Class I counties could easily be extended down through the other counties. He stated there are 15 Class I counties, with Fallon County being the smallest.

{Tape: 1; Side: B; Approx. Time Counter: 391 - 432}

Robert Throessel, Montana Magistrates Association, opposed HB 358, stating that the justice court is the people's court. He stated that this bill removes this benefit to the citizens of Montana. He explained that the fiscal impact would make the salaries be increased up to 90 percent to that of the district court judge. He stated JP's have a long standing history in Montana.

{Tape: 1; Side: B; Approx. Time Counter: 433 - 483}

Mary Ohare Kunst, JP, Rosebud County, opposed HB 358. She explained that JP courts are the people's court. She stated that citizens can resolve their disputes in a less formal manner. JP's make impartial determinations to the laws. She stressed that if laws become so complex that a JP or other citizen cannot understand, then the laws are flawed and should be reassessed.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 31}

Kelly Reisbeck, President Montana Bail Bondsman, opposed HB 358. He stated JP's should not have to be attorneys, nor should common sense be substituted for a law degree.

{Tape: 2; Side: A; Approx. Time Counter: 32 - 45}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. GALLUS asked Judge Herman about JP's salaries. **Judge Herman** responded that they can not be more than 90 percent of the district court judge's salary but could be less. He stated it is up to the county commissioner to determine the salary.

Closing by Sponsor:

REP. LANGE closed on HB 358, urging the Committee to look at what the bill actually does as opposed to what it is perceived to do.

{Tape: 2; Side: A; Approx. Time Counter: 46 - 77}

HEARING ON HB 294

Sponsor: REP. TOM FACEY, HD 67, Missoula

Opening Statement by Sponsor:

REP. FACEY opened on HB 294 stating this bill would remove language in the bill defining deviant sexual conduct. He explained that the bill would redefine deviate sexual relations by removing "sexual contact or sexual intercourse between two persons of the same sex." He cited State v. Gryczan, a 1997 Montana Supreme Court case, which held that consenting adults, regardless of gender, have the right to engage in private, non-commercial sexual conduct. He stated that this strikes at the very core of Montana's constitutional right of individual privacy. He emphasized that the language which HB 294 would remove, has already been determined to be unconstitutional. He asked the Committee to not focus on whether they approve of the acts, but rather urged the Committee to recognize the individual's privacy rights. He emphasized that citizens of Montana have a reasonable fear of being prosecuted under this statute and the statute needs to be amended.

{Tape: 2; Side: A; Approx. Time Counter: 78 - 260}

Proponents' Testimony:

Karl Olson, Director of Pride, supported HB 294 on behalf of gays and lesbians. He stated that half the members of Pride are heterosexual. He explained that this bill is good housekeeping to clean up the language. He outlined the basics of civics; the balance of powers and the three branches of government. He asked the Committee to get rid of this "boutique" law. He stated that nothing can rescind a basic civil right which is the right to

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/28/03

NAME	PRESENT	ABSENT	EXCUSED
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE	✓		
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER			
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM	✓		
REP. BILL THOMAS	✓		
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN			

EXHIBIT 2
DATE 1/28/03
HB 358

Yellowstone County

JUSTICE COURT
(406) 256-2895
(406) 256-2898 (FAX)

P.O. Box 35032
Billings, MT 59107-5032

January 27, 2003

To the House Judiciary Committee

Re: HB 358 County Court Bill

I write this letter in support of HB 358 that would permit first class counties to create a justice court of record to be known as a county court. The bill is permissive. It does not immediately create a justice court of record. This bill does not force or mandate a justice court of record. A county court is not created until the county commissioners or voters of the county elect to create the court of record.

The county court is a tool. Cities over 5,000 now have that tool in creating a municipal court. In the first class counties a county court would avoid the costs of appeal, avoid problems with detainers on extradition, trial anew, discovery trials, etc. In municipal courts, it has reduced the number of appeals and the problems associated with using the court as a discovery court.

The elimination of the trial anew in the district court will reduce the workload of the district court. It will decrease the need for additional district court judges in the high caseload first class counties.

The county court will promote efficient justice in first class counties. Your support of HB 358 is urged.

Sincerely,

LARRY D. HERMAN
JUDGE, JUSTICE COURT

Cascade County Justice Court
Great Falls, Montana

JUDGE KATHLEEN D. JENSEN
JUSTICE OF THE PEACE
CASCADE COUNTY COURTHOUSE
415 2ND AVENUE NORTH
GREAT FALLS, MT 59401

Telephone: (406) 454-6873
FAX: (406) 454-6877

January 27, 2003

Judge Larry Herman
Yellowstone County Justice Court
PO Box 35032
Billings, MT 59107

VIA FAX (406) 256-2898

Re: LC1893

Dear Judge Herman:

As we discussed today, I am unable to attend tomorrow's hearing regarding LC1893. I am writing this letter in support of this bill, which would allow first class counties to establish "county courts" as courts of record. I believe that this bill would offer a very beneficial option for the first class counties.

Respectfully yours,

Kathleen D. Jensen

Kathleen D. Jensen
Justice of the Peace

HB358

KALISPELL MUNICIPAL COURT
P.O. Box 1997 Kalispell, MT 59903
(406) 758-7705

February 5, 2001

Dear Members of the Montana House of Representatives,

This letter is to request your support of House Bill 276. I am the Municipal Court Judge for the City of Kalispell. Kalispell City Court was converted to a Municipal Court in January of 1997. On of the main reasons for the change to a court of record was to effectively reduce the number of appeals.

The 1995 State legislature enacted a statute that had a far-reaching effect on the number of trials. It was the establishment of a fourth or subsequent DUI charge as a felony. Also, there was federal legislation taking away gun privileges from a person convicted of partner assault. The City of Kalispell experienced an increase in jury trials and an increase in the number of cases being appealed to District Court.

Every case referred to City Court was entitled to a jury trial at both the City and District Court levels. Municipal Courts under Montana law are courts of record. The District Court reviewing the appeal has the authority to affirm, reverse, amend or remand the judgment of the municipal court. I can confirm the number of appeals has decreased by 70% since the conversion to Municipal Court.

If a first class county elects to create a County Court I believe the County would expenence the same benefits as the 5 municipal courts (Billings, Bozeman, Great Falls, Kalispell, and Missoula).

If you have any questions regarding my support, please contact me at 758-7705.

Sincerely,

Heidi Ulbricht
Municipal Judge

HB 358

Billings Municipal Court

Box 1178
Billings, MT 59103
Phone 657-8490
Fax 657-3075

Mary Jane McCalla Knisely
Municipal Court Judge

February 1, 2001

Dear Members of the Montana House of Representatives:

This letter is to request your support of House Bill 276. House Bill 276 is a **permissive** bill that does not seek to replace lay judges. Instead, this bill provides large counties with high volume courts an avenue to reduce the number of appeals to the District Court, by creating County Courts as Courts of Record.

I am the Municipal Court Judge for the City of Billings. On January 1, 1997, the Billings City Court was converted to a Municipal Court thus making it a Court of Record. Upon conversion to a Municipal Court, appeals to the District Court are on issues of law only. This conversion has dramatically reduced the number of appeals while still preserving the rights of the litigants.

Year	# of Appeals	
Oct 93- Sept 94	89	**Appeals Requiring Trial de Novo**
Oct 94- Sept 95	78	
Oct 95- Sept 96	95	
Oct 96- Sept 97	55	96-97 (3) months trial de novo (9) months issues of law
Oct 97- Sept 98	17	**Appeals on Issues Of Law Only**
Oct 98- Sept 99	17	
Oct 99- Sept 00	20	

In my experience, a Court of record is a more efficient and effective way of administering justice in a high volume court. I believe this option would benefit class one counties tremendously should their commissioners elect this option.

I practiced in Billings City Court for eight years as a prosecutor and experienced the duplicative and expensive efforts under the trial de novo appeal system. On the contrary, Municipal Court as a court of record is no longer viewed as a dry run or first bite at the apple for litigants. As a result, attorneys are better prepared and thus represent their clients in a more professional manner. Witnesses and juries are empowered as their testimony and decision matters.

The lower court decision can still be reviewed by the District Court but requires sincere effort and a legal basis, instead of providing an instant expensive second trial, without any reason. Why should the District Courts be required to afford litigants a second trial and the tax payers pay witnesses, attorneys and juries twice on a speeding ticket when criminal defendants with on felonies with serious liberties at stake are only given one trial? This is a significant waste of financial resources and judicial time in class one counties with a large volume. Please consider

the fact that the five District Judges in Yellowstone County support HB 276 and have the benefit of seeing the impact the Municipal Court conversion had on their caseload.

House Bill 276 also allows attorney judges to satisfy judicial education requirements by attending continuing education legal seminars as an alternative to the semi-annual judges training. As an attorney judge, I welcome this alternative as my City funds for training are limited. Often times the continuing legal education seminars offered are very pertinent to the issues in Municipal Court. The annual judges training sessions are geared toward smaller jurisdictions with lay judges and many pro se litigants.

While the issues presented are important, they are rarely relevant as there are only five municipal courts in the State. I truly need training that is applicable. Networking with other judges is enjoyable, but I would also like an opportunity to use valuable training dollars to select conferences with content that benefits Municipal Court and the City of Billings as a whole. The opportunity to receive judicial credit through other avenues is very exciting to me.

If you have any questions regarding my support or experience both in a Court of Record and in a Court of Non-Record, please feel free to contact me at 247-8690.

Sincerely,

Mary Jane McCalla Knisely
Billings Municipal Court Judge

MJK/nrs

#B358

Bozeman Municipal Court

615 South 16th Avenue, Suite 123
Bozeman, MT. 59715

Patricia Kyle Carlson
Municipal Judge

(406) 582-2040
Fax (406) 582-2041

House and Senate Judiciary Committees
Montana Legislature
Helena, Montana

January 23, 2001

Re: House Bill 276

Dear Committee Members:

I am writing to encourage you to enact H.B. 276 which would permit Montana's first class counties to create county courts of record, increase judicial qualification requirements, alter attendance requirements at judicial conferences, permit Municipal and County Court judges to serve *pro tem* as District Judges when requested and establish reasonable salaries for those judges.

From 1977 - 1987, I served as United States Magistrate-Judge for the United States District Court for the Southern District of Florida in Miami and in Fort Lauderdale, Florida—one of the busiest federal courts in the nation. After moving to Montana in 1993, I ran for office in 1995 and was elected as the Bozeman City Court Judge. In 2000, the Bozeman City Court was abolished, a Municipal Court was created by City ordinance, and I was elected to that office.

In the year that this court has been a Municipal Court, I have observed great improvements in the court, including but not limited to:

1. Greater efficiency owing to operation under the same rules as District Court;
2. Greater communication between judges of the District Court and courts of limited jurisdiction;
3. Fewer appeals to District Court owing to the existence of a record in the Municipal Court, limitation of the issues available on appeal, absence of the right to a *de novo*, or new, trial on appeal;
4. Monetary savings and saving of time for judges and staff, attorneys and law enforcement officers as cases on appeal do not have to be tried twice;
5. The existence of a record of the proceedings in the Municipal Court simplifies and expedites the identification and resolution of issues; and
6. The reputation of all of the courts in the community have been enhanced by the professional appearance and operation of the Municipal Court.

I strongly urge you to consider favorably this Bill. There are many superior non-lawyer judges in Montana, and I never would want to see the complete abandonment of our system of lay judges. In first class counties, however, the creation of county courts of record with lawyer-judges will better enable those counties to manage efficiently the more complex litigation issues created, in part, by the growth experienced in these areas.

Thank you for your consideration.

Sincerely,

PATRICIA KYLE CARLSON
Municipal Judge
Bozeman Municipal Court

Witness Statement
DATE 1/28/03
HB 358

The Supreme Court of Montana
Commission on Courts of Limited Jurisdiction

David G. Rice
Chairman

301 South Park
P.O. Box 203005
Helena, Montana 59620-3002
Telephone (406) 841-2950
FAX (406) 841-2955

January 28, 2003

Rep. Jim Shockley
Chairmen
House Judiciary Committee
Montana Legislature
Helena, MT 59620

RE: Opponent Testimony HB 358

Dear Chairman Shockley and committee members:

I write to you on behalf of the members of the Supreme Court Commission on Courts of Limited Jurisdiction. Our group is appointed by the Court to plan and carry out the twice-yearly educational programs required of every appointed or elected judge of city, municipal and justice courts in Montana. See 3-11-204(1) and 3-10-203, MCA for the requirement that these judges attend two mandatory annual training sessions supervised by the Supreme Court. We attempt to tailor our sessions to Montana judges. The sessions usually last three to four days with about twenty hours of actual learning presented. A certification test is administered every four years. That test must be passed for a judge to continue to office. Any judge who comes into office during the interim must also pass the test after study of the material presented at the certification school.

As my commission reviews the proposed bill, we make no comment on the concept of the creation of the office of county justice court. That will be a matter for you to settle as you review the bill. We do, however, take exception to the portions of the bill, which would relieve the municipal and new county justice court judges from attendance at our biannual schools. See new section (4) in 3-6-202 and new section (12) in Title 3, Chapter 10. Both of these sections, while acknowledging that attendance at the two annual training sessions Commission, may fulfill the education requirements, require only 15 hours of continuing judicial education. That is much less than is required now and there is no provision that the judicial education must be pertinent to Montana law. While our rules of conference attendance do allow for waiver of one or two trainings for attendance at an out-of-state conference (which we would expect to judicially related) the proposed new law would let the municipal and county justice court judge get by on only 15 hours of such training.

We realize that lawyer-judges may not be happy with our conference attendance requirements, but we feel we are doing all we can to assure uniformity in these limited jurisdiction courts. No judge, or attorney, ever knows enough to avoid studying the basics alongside all other judges in the same setting. The judicial education we offer is well planned and tailored to our Montana judges. To expect a class of judges, all of whom are under the jurisdiction of the Supreme Court, would dilute the effectiveness of our educational plan.

We would ask you to consider the changes the bill will make and maintain the status quo for the municipal judges and the new county court judges, should you see fit to approve the option of such a court for first class counties.

Thank you for review of our comments.

Respectfully,

David G. Rice, Chair
Commission on Courts of Limited Jurisdiction

c: Members of the Commission

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE Date 1/28/03

Bill No. 358 Sponsor(s) Lange

PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
LARRY HERMAN	YCSC	✓		
Lt Howard Blattie	MACO		✓	
ROBERT THROSSELL	MT MAGISTRATES ASSOC		✓	
Kelly Reisbeck	MT BAIL Agents ASSOC		✓	
Mary Russell	MMIA		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 13, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 546, 2/10/2003; HB 553, 2/10/2003; HB 540, 2/10/2003
Executive Action: HB 390; HB 358; HB 546; HB 430

EXECUTIVE ACTION ON HB 358

Motion: **REP. GUTSCHE moved that HB 358 DO PASS.**

Motion/Vote: **REP. NOENNIG moved that HB 358 BE AMENDED. Motion carried unanimously, by voice vote.**

Motion/Vote: **REP. FACEY moved that HB 358 DO PASS AS AMENDED. Motion carried 17-1, by voice vote, with REP. RICE voting no.**

{Tape: 3; Side: A; Approx. Time Counter: 9 - 261}

EXECUTIVE ACTION ON HB 546

Motion: **REP. PARKER moved that HB 546 DO PASS.**

Discussion:

CHAIRMAN SHOCKLEY stated that this bill dealt with people reluctant to pay their child support. **REP. NOENNIG** stated he was confused at the different sentences for different offenders. REP. PARKER responded that a lot of that takes place in other sections of the Code. He explained that when a person is convicted under a deferred sentence, the maximum time is usually three years. However, if there is an extensive financial obligation involving restitution, then a sentence could be deferred for six years. He explained that in this bill, the longer a judge can have a hold over the person to pay, the more likely they will be to pay their support obligations. He explained that someone with a prior felony cannot get a deferred sentence, or if they have already had one sentence deferred, they cannot get a second deferred sentence. He stated that this bill would extend the time horizon in which a judge could supervise someone with a prior felony.

{Tape: 3; Side: A; Approx. Time Counter: 262 - 313}

REP. NOENNIG stated his concern that there is too big a jump in the punishments and he wants to take the penalties in smaller steps. **REP. FACEY** stated this is a good and much needed bill. **REPS. SALES** and **STOKER** stated their concern that if people are locked up, they will not pay anything. **REP. PARKER** stated that locking people up would be rare, and prosecution is only for the most severe cases.

{Tape: 3; Side: A; Approx. Time Counter: 314 - 441}

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 2/13/03

NAME	PRESENT	ABSENT	EXCUSED
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE	✓		
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER	✓		
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM	✓		
REP. BILL THOMAS	✓		
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN	✓		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 358** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Jim Shockley, Chair

And, that such amendments read:

1. Title, page 1, line 6.
Following: "COUNTIES"
Insert: "WITH A POPULATION EXCEEDING 20,000"

2. Title, page 1, line 10 through line 11.
Strike: "PROVIDING" on line 10 through "COURT;" on line 11

3. Title, page 1, line 14.
Strike: "3-10-204,"

4. Title, page 1, line 15.
Strike: "3-10-601,"

5. Page 4, line 7.
Following: "7-1-2111,"
Insert: "with a population exceeding 20,000"

6. Page 4, line 9.
Strike: "10"
Insert: "8"
Strike: "12"

Committee Vote:
Yes 17, No 1.

321450SC.hhn

2-13-03

Insert: "10"
Following: "12]."
Insert: "The court's proceedings must be recorded by electronic recording or stenographic transcription and all papers filed in a proceeding must be included in the record."

7. Page 5, line 2.
Strike: "12"
Insert: "10"

8. Page 5, line 4 through line 13.
Strike: section 7 in its entirety
Renumber: subsequent sections

9. Page 5, line 27 through page 6, line 20.
Strike: section 9 in its entirety
Renumber: subsequent sections

10. Page 8, line 11.
Strike: "10"
Insert: "8"

11. Page 8, line 19.
Strike: "10"
Insert: "8"

12. Page 9, line 9.
Strike: "10"
Insert: "8"
Strike: "12"
Insert: "10"

13. Page 9, line 10.
Strike: "10"
Insert: "8"

14. Page 9, line 11.
Strike: "12"
Insert: "10"

- END -

HOUSE BILL NO. 358

INTRODUCED BY LANGE, NOENNIG, LASZLOFFY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR MUNICIPAL COURT JUDGES; ALLOWING FIRST-CLASS COUNTIES WITH A POPULATION EXCEEDING 20,000 TO ESTABLISH JUSTICES' COURTS AS COURTS OF RECORD TO BE KNOWN AS COUNTY COURTS; PROVIDING THAT THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A COUNTY COURT ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS FROM A COUNTY COURT ARE ON THE RECORD AND NOT DE NOVO; ~~PROVIDING FOR THE RETENTION OF CERTAIN MONEY BY THE COUNTY TO ASSIST IN FUNDING A COUNTY COURT;~~ AUTHORIZING A MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A COUNTY COURT TO ACT AS A JUDGE PRO TEMPORE IN A DISTRICT COURT; PROVIDING A GRANDFATHER CLAUSE FOR EXISTING JUSTICES OF THE PEACE; AMENDING SECTIONS 3-5-114, 3-6-102, 3-6-202, 3-6-204, 3-10-101, 3-10-203, ~~3-10-204,~~ 3-10-207, ~~3-10-601,~~ 25-33-301, 46-17-311, AND MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

(1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;

(2) a retired judge of the district court;

(3) a justice of the peace for a county court, provided for in 3-10-101;

(4) a municipal court judge; or

~~(3)~~(5) a retired justice of the supreme court."

Section 2. Section 3-6-102, MCA, is amended to read:

"3-6-102. Abolition of city court. (1) In cities in which a municipal court is established, the office of city

judge is abolished.

(2) Except as provided in 3-6-101(2), a city judge whose office is abolished shall serve as a municipal court judge in the same city in which ~~he~~ the judge served as city judge for the remainder of ~~his~~ the judge's term and until the office of municipal court judge is filled by election, as provided under 3-6-201 ~~and 3-6-202~~."

Section 3. Section 3-6-202, MCA, is amended to read:

"3-6-202. Qualifications -- certification -- training. (1) A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the ~~1972~~ Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least ~~2~~ 3 years prior to the date of appointment or election.

(2) A municipal court judge ~~must be a resident and voter in the city in which he is elected at the time of his election~~ shall reside in the county in which the court is located and shall meet the residency requirements provided in 3-10-204.

~~(3) A municipal court judge must be certified as provided in 3-1-1502 or 3-1-1503 prior to assuming office.~~

~~(4) There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed municipal court judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided for in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed municipal court judge for attending the sessions by the city in which he holds or will hold court and must be charged against that city.~~

~~(5) Each municipal court judge shall attend the training sessions provided for in subsection (4). Failure to attend disqualifies a judge from office and creates a vacancy in the office. However, the supreme court may excuse a municipal court judge from attendance because of illness, a death in the family, or any other good cause.~~

(3) The commission on courts of limited jurisdiction, upon finding compliance with subsections (1) and (2), shall issue a certificate, as required in 3-1-1502, prior to the municipal court judge assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.

(4) A municipal court judge shall complete a minimum of 15 hours of continuing judicial education

requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.

(5) Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (4).

(6) A municipal court judge is entitled to reimbursement BY THE CITY IN WHICH THE JUDGE HOLDS OR WILL HOLD COURT for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.

(7) On or before December 31 of each year, a municipal court judge shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a municipal court judge or declare a vacancy in the office of the judge for failure to meet the training requirements established in this section."

Section 4. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification -- judge pro tempore. When a judge of a municipal court has been disqualified or is sick or unable to act, ~~he~~ the judge shall call in a justice of the peace for a county court provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a county court, a retired municipal court judge, or ~~some practicing~~ an attorney of the county in which ~~his~~ the court is located~~, who shall be~~ to act as a judge pro tempore. The judge pro tempore ~~with~~ has the same ~~powers for the purposes of the cause~~ power and authority as the municipal court judge ~~of the court~~."

Section 5. Section 3-10-101, MCA, is amended to read:

"3-10-101. Number and location of justices' courts -- authorization to combine with city court -- county court. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice's court.

(2) The board of county commissioners of each county of the state may establish:

(a) one additional justice's court located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county

commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) In a county of the first class, as provided in 7-1-2111, WITH A POPULATION EXCEEDING 20,000 the county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a county court and, in addition to the provisions of this chapter, is also subject to the provisions of [sections ~~10~~ 8 through ~~12~~ 10]. THE COURT'S PROCEEDINGS MUST BE RECORDED BY ELECTRONIC RECORDING OR STENOGRAPHIC TRANSCRIPTION AND ALL PAPERS FILED IN A PROCEEDING MUST BE INCLUDED IN THE RECORD. A county court may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

Section 6. Section 3-10-203, MCA, is amended to read:

"3-10-203. Orientation course -- annual training. (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ must be paid to the elected or appointed justice of the peace for attending the course by the county in which ~~he~~ the justice of the peace holds or will hold court and ~~shall~~ must be charged against that county.

(2) ~~There shall~~ Subject to subsection (4), there must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ must be paid to the elected or appointed justice of the peace for attending the sessions by the county in which ~~he~~ the justice of the peace holds or will hold court and ~~shall~~ must be charged against that county.

(3) ~~Each~~ Except as provided in subsection (4), each justice of the peace shall attend the training

sessions provided for in subsection (2). Failure to attend disqualifies ~~him~~ the justice of the peace from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

(4) A justice of the peace for a county court, provided for in 3-10-101, must meet the requirements provided for in [section ~~12~~ 10]."

~~**Section 7.** Section 3-10-204, MCA, is amended to read:~~

~~"**3-10-204. Residence requirements.** (1) Every Each justice of the peace must shall reside in the county in which his the justice's court is held.~~

~~(2) No A person is not eligible to for the office of justice of the peace unless he shall have the person has been a citizen of the United States and a resident of the county in which he the person is to serve for 1 year next preceding his the person's election or appointment.~~

~~(3) Subject to [section 15], the justice of the peace for a county court, provided for in 3-10-101, must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the Montana constitution, except that a justice of the peace for a county court need only be admitted to the practice of law in Montana for at least 3 years prior to the date of election or appointment.~~"

Section 7. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) ~~The~~ Subject to subsections (2) through (4), the board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504(1).

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

(4) The salary of the justice of the peace for a county court may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

~~**Section 9.** Section 3-10-601, MCA, is amended to read:~~

~~"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.~~ (1) ~~Each justice's court shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.~~

~~(2) Except as provided in subsection (4), all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.~~

~~(3) (a) Except as provided in 46-18-236(7) and subsection (3)(b) of this section, the county treasurer shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:~~

~~(a)(i) 50% to the department of revenue for deposit in the state general fund; and~~

~~(b)(ii) 50% to the county general fund.~~

~~(b) If the county has established a county court as provided in 3-10-101, then the expenses of the county court provided for in 3-10-103, the salaries of the justices of the peace for the county court as provided for in 3-10-207, and the expenses provided for in 3-10-209 must be deducted by the county treasurer before making the distributions provided for in subsection (3)(a).~~

~~(4) (a) The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court.~~

~~(b) In the event that a private person or entity is retained to collect a judgment, the justice's court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute a suit or other lawful collection procedure and other postjudgment remedies in its own name.~~

~~(c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment."~~

NEW SECTION. **Section 8. Appeal to district court from county court -- record on appeal.** (1) A party may appeal to district court from a county court judgment or order. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the

proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a county court to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals from the county court to district court.

NEW SECTION. **Section 9. Disqualification of justice of peace for county court -- judge pro tempore.** When a justice of the peace for a county court has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a county court, a municipal court judge, a retired justice of the peace for a county court, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice of the peace for the county court.

NEW SECTION. **Section 10. Minimum judicial education requirements -- justice of peace for county court.** (1) The commission on courts of limited jurisdiction~~, upon finding compliance with 3-10-204(3),~~ shall issue a certificate, as required in 3-1-1502, prior to the justice of the peace for a county court assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.

(2) A justice of the peace for a county court, provided for in 3-10-101, shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.

(3) Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (2).

(4) A justice of the peace for a county court is entitled to reimbursement BY THE COUNTY IN WHICH THE JUSTICE OF THE PEACE HOLDS OR WILL HOLD COURT for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.

(5) On or before December 31 of each year, a justice of the peace for a county court shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the

commission on courts of limited jurisdiction. The supreme court may sanction a justice of the peace for a county court or declare a vacancy in the office of the justice of the peace for failure to meet the training requirements established in this section.

Section 11. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo -- pleadings; -- conduct of trial. (1) ~~All~~ Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on ~~such~~ terms ~~as may be~~ that are just, ~~allow~~ allows other or amended pleadings to be filed in ~~such~~ the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court established as a county court pursuant to 3-10-101 is on the record as provided in [section ~~10~~ 8]."

Section 12. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a county court is governed by [section ~~10~~ 8].

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice's court, other than a county court, or city court revocation of a

suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure."

NEW SECTION. **Section 13. Grandfather clause.** An incumbent justice of the peace on [the effective date of this act], in a county in which a county court is established, who meets the minimum education requirements for a justice of the peace is eligible to run for the justice of the peace for a county court in that county at the next and subsequent elections held for the justice of the peace for the county court unless the justice of the peace has a break in service.

NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 15. Codification instruction.** [Sections ~~10~~ 8 through ~~12~~ 10] are intended to be codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [sections ~~10~~ 8 through ~~12~~ 10].

NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 2003.

- END -

FISCAL NOTE

Bill #: HB0358 **Title:** Revise laws governing municipal and justice courts

Primary Sponsor: Lange, M **Status:** As Amended in House Committee

Sponsor signature Date Chuck Swysgood, Budget Director Date 2/17/03

Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
General Fund	$0	$0
Revenue:		
General Fund	$0	$0
Net Impact on General Fund Balance:	$0	$0

☒	Significant Local Gov. Impact	☒	Technical Concerns
☐	Included in the Executive Budget	☒	Significant Long-Term Impacts
☐	Dedicated Revenue Form Attached	☐	Needs to be included in HB 2

Fiscal Analysis

1. This bill revises training requirements for municipal court judges (Section 3) and justices of the peace (Section 10). In both sections, judges and justices of the peace are to be reimbursed for actual and necessary expenses and costs incurred in attending continuing judicial or legal education courses. Reimbursement will come from the appropriate local government.
2. In first class counties (as provided in 7-1-2111, MCA) a justice court would be established as a court of record and subsequently considered a county court.
3. A court of record is a court that maintains court-reporting equipment/personnel and provides transcription of cases heard before the court. In general, justice courts do not provide court-reporting services.
4. Converting a court of limited jurisdiction to a court of record is an expensive change. Amounts for this conversion are not available at this time. They could be obtained by a request for proposal.
5. The board of county commissioners would be the deciding party for which courts in first class counties would be converted to county courts (from courts of limited jurisdiction to courts of record).
6. Section 8 prescribes the appeal process for county court judgments to the District Court. The appeals do not need to be tried anew, which may reduce the number of appeals before a jury in District Courts.
7. The cost of providing the records on appeal (transcripts and all papers filed in the action) is assumed to be at the cost of the county.

HB 358 #2

8. Each District Court judge maintains a docket of cases awaiting action in a court. The number of jury trials per year will remain materially constant.
9. As amended, there is no fiscal impact to the state as a result of this bill.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
As stated in assumption #4, the costs of converting a court of limited jurisdiction to a court of record is an expensive change, but both the amounts to convert a single court and the number of courts that will be converted are unknown at this time. As amended (deletion of section 9, amending 3-10-601, MCA), the costs for these conversions are the responsibility of the counties.

TECHNICAL NOTES:
Section 3 and Section 10 do not reference who is responsible for reimbursement of training, although Section 6, which amends 3-10-203, MCA, indicates the county is responsible for justice of the peace training. It may be helpful to clarify that reimbursement will come from the appropriate local government.

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 24, 2003 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan (D)
Sen. Gerald Pease (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 340, HB 358, HB 389, 3/20/2003
Executive Action: HB 389, HB 197, HB 54 , HB 340

explained there was no will involved so there was no personal representative appointed. She had not indicated that anyone had power of attorney for her.

CHAIRMAN DUANE GRIMES questioned whether this would preclude any other arrangements that family members may arrange with a third party. **REP. ANDERSON** affirmed this would not be the case.

Closing by Sponsor:

REP. ANDERSON stated Montana's population is aging and other families may find themselves in this situation.

HEARING ON HB 358

Sponsor: **REP. MICHAEL LANGE, HD 19, BILLINGS**

Proponents: **Kathleen Jensen, Justice of the Peace in Cascade County**
Judge Larry D. Herman, Yellowstone County

Opponents: **Johnny Seiffert, Carbon County Justice of the Peace, and the Montana Magistrates Association**
Kelly Reisbeck, Montana Bail Agents Association

Opening Statement by Sponsor:

REP. MICHAEL LANGE, HD 19, BILLINGS, introduced HB 358. He noted the House Judiciary Committee and the House as a whole have added several amendments to this bill. There was very strong support for this bill. This is a permissive bill which allows a county with a population of over 20,000 to establish a court of record using their current justice court. The counties that would qualify are Cascade, Gallatin, Lake, Hill, Missoula, Butte-Silver Bow, Yellowstone and Ravalli. The county commissioners would make the decision for transfer. The counties would pay for the cost of the conversion of the court. They will also be responsible for any training requirements. The fiscal note states that it will be expensive to change a justice court to a court of record. His county commissioners have assured him the change would not be an expensive change. This bill will reduce the number of appeals before a jury in district courts. Both the state and the counties will save money. In many cases, there is a hearing before the justice court. This case then may automatically go to a hearing before the district court. The issue in the House last session in regard to this idea was that the justice of the peace would need to be an attorney. This may still cause some concern for magistrates in Montana. The bill is permissive and also states that it is not necessary for the court

of record judge to be an attorney. This is the people's court and it needs to maintain its integrity as a court of the people.

Proponents' Testimony:

Kathleen Jensen, Justice of the Peace in Cascade County, stated the de novo appeal into district court is limiting their ability to effectively deal with misdemeanor offenders. The majority of the jury verdicts and decisions are being appealed. Misdemeanors should be left in misdemeanor court. With appeals, everything is being transferred to the district court. It is very difficult to give misdemeanors the import they deserve when the district court is facing a full felony caseload. The district courts are very busy and incarcerated defendants must be tried first. Many of the crimes they see are alcohol related. It is important for first time offenders to be placed into treatment and alcohol-related education be provided. This will provide the possibility of removing these offenders from the system. Last week they tried an offender for his second DUI offense and a host of other driving issues. He had poor performance on the field sobriety test and blew a .192 on the PBT and a .196 on the intoxilizer 5000. Proof was not a problem. He was apprehended after causing a property damage accident. He was convicted and sentenced to seven days jail time as well as fines and treatment. His attorney immediately appealed. There was no error of law or fact. This person is probably drinking and driving on our roads today. If he is not rehabilitated, he will continue this lifestyle. Two jury trials in these matters is a burden on the state. The defense attorneys use the tactic of burdening the state by requiring jury trials in two courts. Fifteen people are called as jurors and six of those people spend the whole day in trial. If the verdict rendered is not the verdict the defense desires, the jurors' day has been wasted. In Cascade County, the defense attorneys have their notices of appeal prepared to hand to the judge as soon as the jury verdict is handed down. Justice courts are courts of record for small claims. The equipment should be present and so there would not be a tremendous additional expense.

{Tape: 1; Side: B}

Judge Larry D. Herman, Yellowstone County, presented his written testimony on HB 358, EXHIBIT**(jus62a01).** In regard to education, the judges of the county court would need to attend the annual sessions and meet the education requirements as set by the Commission of Courts of Limited Jurisdiction. The Commission could set qualifications and more education requirements than are proposed under the bill.

Opponents' Testimony:

Johnny Seiffert, Carbon County Justice of the Peace, and the Montana Magistrates Association, noted the bill as introduced did require the judge of the county courts to be attorneys. This goes against the history of Montana and affects the judges who are out where the rubber meets the road. The House amended the requirement that judges be attorneys. However, the language in the section for fill-in judges and the grandfather clause for the existing judge, should the judge not be an attorney, is still in the bill. This raises concerns that the change was made to remove the attorney requirement initially but in the future there will be attempts to change this requirement to attorney judges. The training requirement is also a concern. The judge of this court will need to attend 15 hours of continuing education. Attendance at the semi-annual training sessions may be given credit for that continuing education. He is a member of the Commission of Courts of Limited Jurisdiction and the Commission is concerned about limiting or changing the requirements for training of these judges. If this is such a great tool and is so necessary for the better of the judiciary of the state of Montana, why is it limited to first class counties only. Any county should be allowed to adopt this provision. A constitutional concern is raised since the Constitution and current law provides that each county must have a justice court and other courts that are allowed and created by the Legislature. If a county court is created and is no longer a justice court, would this require a constitutional change since there will no longer be justice courts.

Kelly Reisbeck, Montana Bail Agents Association, rose in opposition to HB 358. Their original opposition to the bill was due to the provision that all judges be attorneys. Although this has been changed by amendment, they believe the bill is a stepping stone to that end. They are still in opposition to the bill in its present form.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY questioned whether this bill would limit an offender to one jury trial. **REP. LANGE** believed it would.

SEN. CROMLEY asked why all counties were not included in this provision. **REP. LANGE** explained that the Montana Association of Counties (MACo) requested that this provision only include counties with a population of 20,000. The county commissioners saw this as a good idea but change comes slowly in Montana. MACo wanted to see this established in the large counties and, hopefully, there would be a track record of success. This would

provide a comfort level with the rest of the counties. He assured the Committee that he had entirely no plans to come back in two years and request the provision for judge to be an attorney. He would adamantly resist any such attempt.

SEN. CROMLEY asked **Judge Herman** to explain the type of training required for a judge of limited court jurisdiction. **Judge Herman** pointed out the qualifications for a justice of the peace is age 18. There are no other qualifications. The code states they must attend an orientation course following election and twice a year they need to attend training sessions. The Commission on Courts of Limited Jurisdiction has been given the responsibility of setting the course of education and training that must be met by all judges of the courts of limited jurisdiction before they can assume office. The Commission has chosen to provide an orientation course or a training session after each election. A certification test is given.

SEN. PERRY asked whether the House considered HB 14 as it relates to this bill. **REP. LANGE** explained HB 14 was heard early in the session. He further noted that **REP. SHOCKLEY, Chairman of the House Judiciary Committee,** made the comment that the two bills do coordinate very well. The concern was HB 14 took the overall question to the people. He was very supportive of both bills.

SEN. PERRY asked whether **REP. LANGE** had an objection to extending this provision to all counties, since it was permissive. **REP. LANGE** did not have a personal problem with doing so. He agreed to the change MACo wanted. He did not want the county commissioners to oppose the bill without fully understanding its intent. If this could be explained to every county commissioner across the state of Montana, he believed they would be fine with the bill because it is permissive and it would be up to each county to decide whether or not they wanted to pursue this idea. The fear factor would need to be overcome.

SEN. O'NEIL noted appeals from county courts would go to the district court. He asked whether the changes would address both civil and criminal cases. **Ms. Jensen** affirmed it was her understanding this bill would impact both the civil and criminal cases. Instead of a trial de novo, there will be a matter of record. This will be similar to the way small claims are currently handled in justice court. A record is made and when there is an appeal, there needs to be an error of law or no evidence supporting the factual finding. The record is transmitted to district court.

SEN. O'NEIL raised a concern that the justice court would not be using the Rules of Civil Procedure in the same manner as the

district court would use these rules. **Ms. Jensen** did not agree. There are Rules of Civil Procedure for justices and municipal courts. They are not always identical to the Rules of Civil Procedure that apply in district courts. The same rules of evidence are applied.

SEN. O'NEIL further questioned whether interrogatories were allowed to be prepared prior to trial. He further questioned whether depositions and requests for admission were allowed. **Ms. Jensen** noted that would be one of the primary differences between their civil rules and the civil rules in the district court. In justice court there is an expectation that discovery will be conducted informally. As a result, the parties are expected to work together. If that discovery is fruitless, the party requesting the information has the ability to come to court and request that formal discovery be carried out. In that case, it would be possible to have interrogatories, depositions, and requests for productions. In district court this would be the standard but in justice court it would be necessary to obtain an order from the judge in order to undertake those discovery methods. Those orders are usually granted. Usually the party does not understand why they are being asked for information.

SEN. MIKE WHEAT remarked the bill provided that in municipal courts, the judges needed to be attorneys. He questioned why the first class counties could not be granted the authority to establish qualifications for the judge, which may include being a lawyer. **Judge Herman** maintained that currently those qualifications are set by state law. He did not know whether or not a county ordinance could be established by the commissioners to set the qualifications for the judges. There may be a conflict with the state law.

SEN. WHEAT questioned whether **Judge Seiffert** would still oppose the bill if the first class counties could be given the option to require their judges to be attorneys. **Judge Seiffert** explained that the Montana Magistrates Association would still oppose the bill because it would be requiring a court of limited jurisdiction judge to be an attorney. Their bylaws state that they oppose doing away with lay judges. The Association includes 101 judges out of 115 judges in the state.

SEN. WHEAT noted the municipal courts were courts of limited jurisdiction. He questioned whether the Association opposed the current law that requires municipal judges to be attorneys. **Judge Seiffert** maintained the Association opposed the bill but it still passed.

SEN. WHEAT questioned whether there were problems with the fact that municipal court judges were attorneys. **Judge Seiffert** did not believe there was a noticeable problem. Some rules were different from the justice and city courts follow because they are courts of record. The reason behind this provision was due to the appeal problem.

{Tape: 2; Side: A}

Closing by Sponsor:

REP. LANGE remarked this bill would provide cost savings to the people of Montana at every level. Repeated trials are a disservice to justice. This bill will save the state, counties, and taxpayers money. He found it interesting that the opposition to the bill came from counties that would not be affected and from the individuals whose concerns had been addressed by amendments. This simply leaves the fear factor. There is only one reason for a magistrate to be afraid of the bill and that is if there is a court of record, things that happen in a courtroom are on the record. Everything the Legislature does is on the record for the public's eye to see what is or is not accomplished. An agreement was made with MACo so that the bill would not cause economic anxiety to the counties. The idea is to show that the plan works and makes a positive difference. As to the constitutionality of the bill, he finds that issue to be a complete red herring. There is no conflict.

Additional handout from **Daniel L. Schwarz, Chief Deputy County Attorney, Yellowstone County,** EXHIBIT**(jus62a02).**

HEARING ON HB 389

Sponsor: **REP. CAROL GIBSON, HD 20, BILLINGS,**

Proponents: **Diana Koch, Legal Counsel for the Department of Corrections**
Mike Mahoney, Warden at Montana State Prison

Opponents: **None**

Opening Statement by Sponsor:

REP. CAROL GIBSON, HD 20, BILLINGS, introduced HB 389. She explained that in the past there was one Montana State Prison at Deer Lodge and when a judge sentenced someone they would go to that prison. Other correctional institutions have been built. They are located in Missoula, Great Falls, Glendive and Shelby.

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 3-24-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN		✓	
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE		✓	
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

Yellowstone County

JUSTICE COURT
(406) 256-2895
FAX: (406) 256-2898
Email: ldherman@co.yellowstone.mt.us

Judge Larry D. Herman
P.O. Box 35032
Billings, MT 59107-5032
l.d.herman@att.net

February 22, 2003

Senate Judiciary Committee
Montana Senate
P.O. Box 200500
Helena, Montana 59

RE: HB 358

HB358 is a bill worthy of passage by the legislature. Briefly HB 358 will provide first class counties with a population of more than 20,000 a tool to make the justice court more efficient and less costly to operate. The creation of a justice court of record to be known as a county court is not mandatory, but permissive.

The establishment of a county court will do the following:

- ❖ End the practice by attorneys using the lower courts as courts of discovery. A case will have to be tried right the first time. The appeal to the Distinct Court will be on the record.
- ❖ Eliminated two jury trials, one in the justice court and another in the District Court.
- ❖ Counties with a county court of record will receive a substantial economic benefit in the reduction, or the elimination, of costs attributed to the appeal and second trial in the District Court, i.e. sheriff deputy costs, county attorney costs, public defender costs, clerk of the district court, jury costs etc.
- ❖ State agencies will receive a substantial economic benefit in the reduction, or the elimination, of costs attributed to the appeal and second trial in the District Court, i.e. highway patrol officers, fish and game warden, GVW officers, etc. The state agencies will be able to use their officers to perform their functions as peace officers efficiently.
- ❖ Judges will be more accountable to those who appear in a county court created under HB 358.

The purpose of the county court is to make the justice court efficient and responsible to all who appear in the court. Also it will reduce the cost to all who use the court by the

SENATE JUDICIARY
Exhibit No. 1
Date 3-24-03
Bill No. HB358

elimination of unnecessary costs for a second trial. The judge of the county court will be more accountable. The potential savings to the counties is not calculable with certainty at this time, but it will be substantial in application.

Attached are two proposed amendments to HB 358. The first will allow the cities with municipal courts to provide for residency requirements as cities can currently do with city judges. The second will provide for certification of a person for county judge upon meeting certain requirements. The amendment is not a prerequisite to filing for or holding the office of county judge and the commission on courts of limited jurisdiction may set other education requirements. It should be pointed out, that person elected a county judge under HB 358 must attend two training sessions and meet the certification requirements set by the commission of courts of limited jurisdiction.

Also attached are copies of letters from others that support HB 358.

I am prepared to answer any questions that have been raised by my comments or about HB 358 generally.

Sincerely,

Larry D. Herman
Judge, Justice Court

Proposed amendments to HB 358

Section 3. Section 3-6-202, MCA, is amended to read:

3-6-202. Qualifications -- certification -- training. (1) A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the ~~1972~~ Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least ~~2~~ 3 years prior to the date of appointment or election.

(2) A municipal court judge ~~must be a resident and voter in the city in which he is elected at the time of his election~~ shall reside in the county in which the court is located and shall meet the residency requirements provided in 3-10-204 AND BY CITY ORDINANCE.

NEW SECTION. **Section 10. Minimum judicial education requirements -- justice of peace for county court.** (1) The commission on courts of limited jurisdiction, UPON FINDING COMPLIANCE WITH 3-5-123, ~~upon finding compliance with 3-10-204(3),~~ shall issue a certificate, as required in 3-1-1502, prior to the justice of the peace for a county court assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.

YELLOWSTONE COUNTY ATTORNEY
217 North 27th Street
P.O. Box 35025
Billings, MT 59107-5025
(406) 256-2870
(406) 256-6931 - Fax

March 20, 2003

House Judiciary Committee
C/O Representative Jim Shockley, Chair
MT House of Representatives
PO box 200400
Helena MT 59620 0400

RE: HOUSE BILL 358

Dear Judiciary Committee:

I am the Chief Deputy Yellowstone County Attorney and I send this letter in support of House Bill 358. As the former Powder River County Attorney, I know the problems rural counties have in finding attorneys to administer the law. However, HB 358 seems to address all concerns in making certain justice courts into courts of record.

The bill will allow certain populous counties to make their justice courts into courts of records. This change will allow defendants one trial (and an appeal to district court only as to matters of law). Not only will this serve to save the taxpayers a large amount of precious resources, but will mean victims of partner/family assaults and other violent misdemeanors will not have to go through multiple trials if a defendant is convicted the first time around.

Another positive aspect of the bill is that it allows non-lawyer justices an opportunity to continue to hear cases if certain criteria are met. For instance, in my county, we have a Justice of the Peace who has experience second to none. He has been on the bench for over a quarter of a century and has law enforcement experience prior to that. His experience could continue to count as a Justice of the Peace under the provisions of this bill.

In other words, everyone comes up a winner with the enactment of this bill into law. Victims are less traumatized by the justice system; taxpayers save thousands upon thousands of dollars, and Justices with great experience and expertise are still allowed to hear cases. Justice is served quickly, fairly, and efficiently.

I completely support the passage of this important legislation into law and hope that you send this measure to the floor of the house with a "do pass" recommendation.

Sincerely,

Daniel L. Schwarz
Chief Deputy County Attorney

DLS/alj

Cascade County Justice Court
Great Falls, Montana

JUDGE KATHLEEN D. JENSEN
JUSTICE OF THE PEACE
CASCADE COUNTY COURTHOUSE
415 2ND AVENUE NORTH
GREAT FALLS, MT 59401

Telephone: (406) 454-6873
FAX: (406) 454-6877

January 27, 2003

Judge Larry Herman
Yellowstone County Justice Court
PO Box 35032
Billings, MT 59107

VIA FAX (406) 256-2898

Re: LC1893

Dear Judge Herman:

As we discussed today, I am unable to attend tomorrow's hearing regarding LC1893. I am writing this letter in support of this bill, which would allow first class counties to establish "county courts" as courts of record. I believe that this bill would offer a very beneficial option for the first class counties.

Respectfully yours,

Kathleen D. Jensen

Kathleen D. Jensen
Justice of the Peace

HB358

KALISPELL MUNICIPAL COURT
P.O. Box 1997 Kalispell, MT 59903
(406) 758-7705

February 5, 2001

Dear Members of the Montana House of Representatives,

This letter is to request your support of House Bill 276. I am the Municipal Court Judge for the City of Kalispell. Kalispell City Court was converted to a Municipal Court in January of 1997. On of the main reasons for the change to a court of record was to effectively reduce the number of appeals.

The 1995 State legislature enacted a statute that had a far-reaching effect on the number of trials. It was the establishment of a fourth or subsequent DUI charge as a felony. Also, there was federal legislation taking away gun privileges from a person convicted of partner assault. The City of Kalispell experienced an increase in jury trials and an increase in the number of cases being appealed to District Court.

Every case referred to City Court was entitled to a jury trial at both the City and District Court levels. Municipal Courts under Montana law are courts of record. The District Court reviewing the appeal has the authority to affirm, reverse, amend or remand the judgment of the municipal court. I can confirm the number of appeals has decreased by 70% since the conversion to Municipal Court.

If a first class county elects to create a County Court I believe the County would experience the same benefits as the 5 municipal courts (Billings, Bozeman, Great Falls, Kalispell, and Missoula).

If you have any questions regarding my support, please contact me at 758-7705.

Sincerely,

Heidi Ulbricht
Municipal Judge

HB 358

Billings Municipal Court

Box 1178
Billings, MT 59103
Phone 657-8490
Fax 657-3075

Mary Jane McCalla Knisely
Municipal Court Judge

February 1, 2001

Dear Members of the Montana House of Representatives:

This letter is to request your support of House Bill 276. House Bill 276 is a **permissive** bill that does not seek to replace lay judges. Instead, this bill provides large counties with high volume courts an avenue to reduce the number of appeals to the District Court, by creating County Courts as Courts of Record.

I am the Municipal Court Judge for the City of Billings. On January 1, 1997, the Billings City Court was converted to a Municipal Court thus making it a Court of Record. Upon conversion to a Municipal Court, appeals to the District Court are on issues of law only. This conversion has dramatically reduced the number of appeals while still preserving the rights of the litigants.

Year	# of Appeals	
Oct 93- Sept 94	89	**Appeals Requiring Trial de Novo**
Oct 94- Sept 95	78	
Oct 95- Sept 96	95	
Oct 96- Sept 97	55	96-97 (3) months trial de novo (9) months issues of law
Oct 97- Sept 98	17	**Appeals on Issues Of Law Only**
Oct 98- Sept 99	17	
Oct 99- Sept 00	20	

In my experience, a Court of record is a more efficient and effective way of administering justice in a high volume court. I believe this option would benefit class one counties tremendously should their commissioners elect this option.

I practiced in Billings City Court for eight years as a prosecutor and experienced the duplicative and expensive efforts under the trial de novo appeal system. On the contrary, Municipal Court as a court of record is no longer viewed as a dry run or first bite at the apple for litigants. As a result, attorneys are better prepared and thus represent their clients in a more professional manner. Witnesses and juries are empowered as their testimony and decision matters.

The lower court decision can still be reviewed by the District Court but requires sincere effort and a legal basis, instead of providing an instant expensive second trial, without any reason. Why should the District Courts be required to afford litigants a second trial and the tax payers pay witnesses, attorneys and juries twice on a speeding ticket when criminal defendants with on felonies with serious liberties at stake are only given one trial? This is a significant waste of financial resources and judicial time in class one counties with a large volume. Please consider

the fact that the five District Judges in Yellowstone County support HB 276 and have the benefit of seeing the impact the Municipal Court conversion had on their caseload.

House Bill 276 also allows attorney judges to satisfy judicial education requirements by attending continuing education legal seminars as an alternative to the semi-annual judges training. As an attorney judge, I welcome this alternative as my City funds for training are limited. Often times the continuing legal education seminars offered are very pertinent to the issues in Municipal Court. The annual judges training sessions are geared toward smaller jurisdictions with lay judges and many pro se litigants.

While the issues presented are important, they are rarely relevant as there are only five municipal courts in the State. I truly need training that is applicable. Networking with other judges is enjoyable, but I would also like an opportunity to use valuable training dollars to select conferences with content that benefits Municipal Court and the City of Billings as a whole. The opportunity to receive judicial credit through other avenues is very exciting to me.

If you have any questions regarding my support or experience both in a Court of Record and in a Court of Non-Record, please feel free to contact me at 247-8690.

Sincerely,

Mary Jane McCalla Knisely
Billings Municipal Court Judge

MJK/nrs

#HB358

Bozeman Municipal Court

615 South 16th Avenue, Suite 123
Bozeman, MT. 59715

Patricia Kyle Carlson
Municipal Judge

(406) 582-2040
Fax (406) 582-2041

House and Senate Judiciary Committees
Montana Legislature
Helena, Montana

January 23, 2001

Re: House Bill 276

Dear Committee Members:

I am writing to encourage you to enact H.B. 276 which would permit Montana's first class counties to create county courts of record, increase judicial qualification requirements, alter attendance requirements at judicial conferences, permit Municipal and County Court judges to serve *pro tem* as District Judges when requested and establish reasonable salaries for those judges.

From 1977 - 1987, I served as United States Magistrate-Judge for the United States District Court for the Southern District of Florida in Miami and in Fort Lauderdale, Florida—one of the busiest federal courts in the nation. After moving to Montana in 1993, I ran for office in 1995 and was elected as the Bozeman City Court Judge. In 2000, the Bozeman City Court was abolished, a Municipal Court was created by City ordinance, and I was elected to that office.

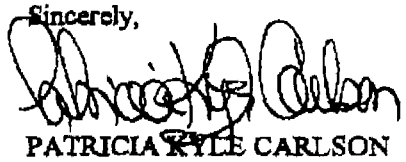
In the year that this court has been a Municipal Court, I have observed great improvements in the court, including but not limited to:

1. Greater efficiency owing to operation under the same rules as District Court;
2. Greater communication between judges of the District Court and courts of limited jurisdiction;
3. Fewer appeals to District Court owing to the existence of a record in the Municipal Court, limitation of the issues available on appeal, absence of the right to a *de novo*, or new, trial on appeal;
4. Monetary savings and saving of time for judges and staff, attorneys and law enforcement officers as cases on appeal do not have to be tried twice;
5. The existence of a record of the proceedings in the Municipal Court simplifies and expedites the identification and resolution of issues; and
6. The reputation of all of the courts in the community have been enhanced by the professional appearance and operation of the Municipal Court.

I strongly urge you to consider favorably this Bill. There are many superior non-lawyer judges in Montana, and I never would want to see the complete abandonment of our system of lay judges. In first class counties, however, the creation of county courts of record with lawyer-judges will better enable those counties to manage efficiently the more complex litigation issues created, in part, by the growth experienced in these areas.

Thank you for your consideration.

Sincerely,



PATRICIA KYLE CARLSON
Municipal Judge
Bozeman Municipal Court

YELLOWSTONE COUNTY ATTORNEY
217 North 27th Street
P.O. Box 35025
Billings, MT 59107-5025
(406) 256-2870
(406) 256-6931 - Fax

March 20, 2003

House Judiciary Committee
C/O Representative Jim Shockley, Chair
MT House of Representatives
PO box 200400
Helena MT 59620 0400

RE: HOUSE BILL 358

Dear Judiciary Committee:

I am the Chief Deputy Yellowstone County Attorney and I send this letter in support of House Bill 358. As the former Powder River County Attorney, I know the problems rural counties have in finding attorneys to administer the law. However, HB 358 seems to address all concerns in making certain justice courts into courts of record.

The bill will allow certain populous counties to make their justice courts into courts of records. This change will allow defendants one trial (and an appeal to district court only as to matters of law). Not only will this serve to save the taxpayers a large amount of precious resources, but will mean victims of partner/family assaults and other violent misdemeanors will not have to go through multiple trials if a defendant is convicted the first time around.

Another positive aspect of the bill is that it allows non-lawyer justices an opportunity to continue to hear cases if certain criteria are met. For instance, in my county, we have a Justice of the Peace who has experience second to none. He has been on the bench for over a quarter of a century and has law enforcement experience prior to that. His experience could continue to count as a Justice of the Peace under the provisions of this bill.

In other words, everyone comes up a winner with the enactment of this bill into law. Victims are less traumatized by the justice system; taxpayers save thousands upon thousands of dollars, and Justices with great experience and expertise are still allowed to hear cases. Justice is served quickly, fairly, and efficiently.

I completely support the passage of this important legislation into law and hope that you send this measure to the floor of the house with a "do pass" recommendation.

Sincerely,

Daniel L. Schwarz
Chief Deputy County Attorney

DLS/alj

SENATE JUDICIARY
Exhibit No. 2
Date 3-24-03
Bill No. HB 358

DATE March 24- 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 340- HB 358

HB 389

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Charles Brooks	698-2380	Yellowstone County	HB358	✓	
Kelly Reisbeck	443-3767	Montana Bail Agents Assoc	HB358		✓
Kathleen Jensen	454-6873	Cascade County Justice Ct	HB358	✓	
DIANA KOCH	444-9593	DOC	HB389	✓	
Mike Mahoney	846-1550	DOC	HB389	✓	
Robert Throssell	469-6865	MT Magistrates Asso	HB358		✓
LARRY HERMAN	256-2896	Yellowstone County	HB358	✓	
Johnny Seiffert	446-1440	MT Magistrates Asso	HB-358		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 25, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 521, HB 489, HB 496, 3/20/2003
Executive Action: HB 224, HB 141, HB 155, HB 496, HB 308, HB 358, HB 390, HB 521, HB 61

be mandatory for life for the level three offenders but there could be discretion given to the judge for the level one and two offenders.

SEN. MCGEE spoke against the motion because he did not see a difference between the levels. If someone is a sexual violator, it is their responsibility, not the taxpayers, to pay for the costs involved in notifying the public and the victim.

SEN. CROMLEY supported the motion. This ought to be addressed at the time of sentencing. Unfortunately, the bill does not do that. The responsibility for paying the cost should go to the person sentenced. He did raise a concern that the offender could object to this on the basis that he or she would receive an additional penalty through this statute, which is not a part of the sentence.

SEN. CURTISS accepted **SEN. WHEAT's** suggestion.

Ms. Lane clarified that the amendment would include the suggestion that this be discretionary with all other offenders and mandatory for level three offenders.

SEN. PERRY added the language stated "if able to pay shall pay".

Vote: **The motion carried with PERRY and MCGEE voting no.**

Motion/Vote: **SEN. PERRY** moved that **HB 308 BE CONCURRED IN AS AMENDED. The motion carried with MCGEE voting no.**

EXECUTIVE ACTION ON HB 358

Motion: **SEN. CROMLEY** moved that **HB 358 BE CONCURRED IN.**

Discussion:

SEN. CROMLEY believed a person was entitled to a jury trial and this bill will allow the state and the counties to reduce a lot of expenses by having one jury trial. He would have liked to see this apply to all counties because it is permissive.

SEN. WHEAT agreed. He raised a concern in converting to a court of record it would be important for the judges in those courts to be attorneys. He understands the idea of the people's court. Without a trial de novo, the district court would need to review that record for issues of error.

SEN. O'NEIL also believed this should apply to all counties.

SEN. PERRY would like to see this provision extended permissively to all counties. He raised a concern with naming first class counties.

SEN. CURTISS asked who would currently be responsible for training of the justices of the peace.

SEN. CROMLEY noted before the judges began sitting they would go through a very intensive training period. They are given a lot of hands-on training in terms of handling trials.

SEN. WHEAT added the training took place at a national judiciary college in Reno. Judges from across the country participate in this college.

SEN. MCGEE questioned how difficult it would be to allow for all counties to be able to have this choice.

Ms. Lane did not see any difficulty with the matter because that is how the bill was introduced. She pointed out that the Constitution requires the right to jury trial is inviolate. She did not know whether the bill would meet constitutional challenge. Article VII, Section 5 of the Constitution states there shall be elected in each county at least one justice of the peace. Section 3-10-101, which is in the bill, states in statute there must be at least one justice court in each county. One of the witnesses at the hearing pointed out, if the justice courts become county courts, would the constitutional requirement of a justice court be met.

SEN. MCGEE summarized the bill would allow the counties to make the justice courts county courts and then make these courts to be courts of record. If the definition of "county court" was stricken from the language, this would still be a justice court. The justice courts could be made courts of record if the county chooses to do so. Would this overcome the issue?

Ms. Lane believed it would. She did not know why the bill was drafted to create the new entity of county courts rather than requiring justice courts to become courts of record.

Substitute Motion: **SEN. O'NEIL** moved that **HB 358 BE AMENDED.**

Discussion:

SEN. O'NEIL explained his amendment. He would allow counties to have their justice courts become their courts of record and strike the language referring to county courts. This would be extended to all counties.

SEN. CROMLEY argued against the motion. There could be a problem in some counties. In the counties that do not make their justice courts a court of record, a defendant would have a right to appeal and receive a new jury trial. There would be a discrepancy in that in some counties a person would be given two jury trials while in other counties they would only be entitled to one jury trial. After the hearing on HB 14, the constitutional amendment to limit misdemeanor trials to either lower or district court, he reviewed the case referenced. The court mentioned that Article VI, Section 42 of the Montana Constitution clearly allows for the possibility that laws might be enacted making appeals to district court from justice courts not de novo. The court added that provision of the Constitution would not be implicated in the case.

Ms. Lane will prepare the amendments as discussed.

SEN. O'NEIL withdrew his motion to amend.

SEN. CROMLEY withdrew his motion to concur.

EXECUTIVE ACTION ON HB 390

Motion: **SEN. CROMLEY** moved that **HB 390 BE CONCURRED IN.**

Substitute Motion: **SEN. O'NEIL** moved that **HB 390 BE AMENDED.**

Ms. Lane explained the bill had been discussed by the Committee at one time and **SEN. O'NEIL** offered HB039001.avl which would provide that a person who brings an action on the person's own behalf without an attorney may receive attorneys fees at the judge's discretion. This amendment failed.

{Tape: 3; Side: B}

SEN. CROMLEY withdrew his motion to concur in HB 390.

EXECUTIVE ACTION ON HB 453

Motion: **SEN. O'NEIL** moved that **HB 453 BE CONCURRED IN.**

Substitute Motion: **SEN. CROMLEY** moved that **HB 453 BE AMENDED, HB045303.ajm., EXHIBIT(jus63a09).**

Discussion:

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 3-25-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN		✓	
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 27, 2003 at 9:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:
Executive Action: HB 293, HB 358, HB 256, HB 390, HB5 36, HB 489, HB 579

SEN. WHEAT maintained the bill set a statewide policy because it defined racial profiling. It leaves the decision to the local communities in regard to adopting the policies and procedures in conformance with the racial profiling issue. Law enforcement is in support of the bill.

{Tape: 1; Side: B}

SEN. MCGEE questioned whether there is currently a definition of racial profiling in law. Could a complaint be filed against someone for racial profiling?

SEN. WHEAT believed a complaint could be filed by using case law. He did not believe it was defined in statute. The claim would be based on violation of civil rights.

SEN. MCGEE claimed the highway patrol has already adopted procedures in this regard. They did not need this bill. In their procedures they probably have adopted a definition of racial profiling. They have adopted a format to racially profile when they stop someone. They mark what they believe to be the race of the individual that they have stopped.

Vote: The motion carried on roll call vote 5-4.

EXECUTIVE ACTION ON HB 358

Motion: **SEN. CROMLEY** moved that **HB 358 BE CONCURRED IN.**

Discussion:

SEN. CROMLEY noted there was an interest in expanding this provision to all counties. He agreed it should be expanded but was concerned the bill may not pass if this is done.

SEN. O'NEIL had asked for an amendment to be prepared that would allow the counties to have their justice court be a court of record if this was their desire. The law currently states a district court judge shall have practiced law in Montana for five years and that a justice court judge does not need to do so. It is silent in regard to a county court judge. If a justice court became a court of record, it is important the judge have some experience and an understanding of the law but he would not like to see a requirement that the judge be a graduate of an American Bar Association accredited law school and also have five years of practice. Since the amendment was not prepared at this time, he decided not to move a conceptual motion and would address the issue on the Senate Floor.

SEN. WHEAT raised a concern in regard to converting justice of the peace courts to county courts. The Constitution states there shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. It also states that justice courts shall have such original jurisdiction as provided by law. A person convicted of a DUI who wanted to appeal the conviction could claim a county court did not have jurisdiction under the Constitution because county courts are not provided for in the Constitution.

SEN. CROMLEY believed the Constitution is fairly broad and the legislature could define the jurisdiction of the justice courts. It states the judicial power of the state is vested in one Supreme Court, district courts, justice courts, and such other courts as may be provided by law. If existing justice courts were used, there may be a dual system. In Yellowstone County there might be a justice court that could be a court of record and the appeal would only be on the record. The person would only be entitled to one jury trial. In neighboring Treasure County, a defendant would have two jury trials to include one in justice of the peace court and one in district court.

Ms. Lane added Article V of the Constitution states that there shall be elected in each county at least one justice of the peace. She believed the bill still allowed for that.

SEN. CURTISS raised a concern in regard to the costs to the counties.

SEN. MANGAN noted this was a permissive bill. A county undertaking this type of decision would be fully aware of the costs to local governments.

SEN. GARY PERRY was bothered by the fact that the counties did not testify at the hearing. He noted the fiscal note did state the change will be an expensive change for the counties. He questioned whether cases from district court could be heard in county courts to alleviate the burden on the district courts.

SEN. WHEAT did not think this would work. Justice courts handle traffic citations and small claims issues. In regard to DUI cases, the district court would review the proceedings because there would be a record of the proceedings. A trial de novo would not be necessary.

SEN. CROMLEY believed some of the counties felt they would save money with this bill because there are a lot of cases which end up being a free pass for the defendant to have a jury trial in the justice of the peace court. If there is a guilty verdict,

this can be appealed to the district court with a new jury trial instead of a review of the record.

SEN. WHEAT suggested deleting the language which stated that if the justice's court is established as a court of record, it must be known as a county court. The county could make the justice's court a court of record.

Substitute Motion: **SEN. O'NEIL** moved that **HB 358 BE AMENDED.**

Discussion:

SEN. O'NEIL explained his amendment. On page 4, line 9, he would strike the word "the" and insert the word "a". This would state that the county may establish "a" justice's court as a court of record. If "a" justice's court is established as a court of record it may be known as a county court. The county would not need to replace their justice's court with a county court.

Ms. Lane raised a concern in that this would provide a hierarchy in one county. This would make the question of equal protection worse if there was a hierarchy in some counties and not in others. Some counties may have county courts and people going into county courts would not have a second trial in district court.

{Tape: 2; Side: A}

SEN. O'NEIL claimed Flathead County has a hierarchy of courts. There is a small claims court and a justice court. People are channeled to the courts. The clerk of court helps the people prepare cases for the small claims court.

Vote: **The motion failed with O'NEIL voting aye.**

SEN. MCGEE suggested language on page 4, line 8, "(5) In a county of the first class, as provided in 7-1-2111, WITH A POPULATION EXCEEDING 20,000 the county may establish a justice's court as a court of record." The following sentence would be stricken through the word "chapter" on line 10. The last sentence on lines 13 through 14 would also be stricken.

SEN. WHEAT agreed to the language change. This would allow justice's courts to be created as courts of record. They would not be called county courts.

Substitute Motion: **SEN. MCGEE** moved that **HB 358 BE AMENDED.**

Discussion:

SEN. MCGEE would use the language as outlined above for his amendment. He would strike all references to county court and reinsert the justice court language.

SEN. CROMLEY added for ease of editing wherever the term "county court" is used the language could state "justice court established as a court of record".

SEN. MCGEE raised a concern regarding the original intent of using the term "county court".

SEN. WHEAT believed they wanted to distinguish the courts that become courts of record from the justice's court that are not courts of record. He did not see any harm in striking the term "county court".

SEN. MCGEE noted there had been earlier discussion in regard to making all counties able to convert justice courts to courts of record. He wanted to include this concept as a friendly amendment.

SEN. WHEAT remarked Section 3-1-102 states the court of impeachment, the supreme court, the district courts, and the municipal courts are courts of record. It would necessary to amend this section as well.

SEN. MCGEE included this as a friendly amendment.

SEN. MCGEE asked **REP. JIM SHOCKLEY** if he saw any problem with an amendment stating all counties would have the discretion to make their justice courts a court of record. The reference to a county court would be eliminated.

REP. SHOCKLEY noted the original bill included all counties but with the politics involved, it had to be limited to the larger counties. This is an annual bill from Yellowstone County and it is always opposed by the Montana Magistrates Association because the justices of the peace and the city court judges are afraid that this is the first step towards the requirement that the judges be attorneys.

SEN. CROMLEY further asked **REP. SHOCKLEY** if deleting the term "county court" from the bill would be problematic. **REP. SHOCKLEY** noted the justice of the peace in his county did not like the bill.

SEN. MCGEE noted the concerns raised by the Montana Magistrates Association at the hearing dealt with training requirements, the provision being limited to only first class counties, and constitutional concerns.

SEN. PERRY requested the amendment be segregated. He was in favor of the primary amendment involving changing county courts to justice courts. He was concerned about removing the first class county differentiation because it may affect the passage of the bill.

CHAIRMAN GRIMES requested the amendment be drafted and presented to the Committee for action at a later date.

SEN. MCGEE withdrew his motion to amend HB 358.

SEN. CROMLEY withdrew his motion to concur in HB 358.

Motion: **SEN. PERRY** moved that **HB 358 BE INDEFINITELY POSTPONED.**

Discussion:

SEN. PERRY maintained the Committee did not receive a great deal of input from the counties.

SEN. O'NEIL resisted the motion. This is discretionary in regard to the counties. If they believe it will save them money, they can use this tool.

Vote: **The motion carried with CROMLEY and O'NEIL voting no.**

EXECUTIVE ACTION ON HB 256

Motion/Vote: **SEN. MCGEE** moved that **HB 256 BE RECONSIDERED. Motion carried unanimously.**

Motion: **SEN. MCGEE** moved that **HB 256 BE CONCURRED IN.**

Substitute Motion: **SEN. CROMLEY** moved that **HB 256 BE AMENDED.**

{Tape: 2; Side: B}

Discussion:

SEN. CROMLEY provided a copy of his amendment, Rose II, EXHIBIT **(jus65a02)**. It would leave intact the current geographical jurisdiction of one mile around the campus for campus-related activities, other buildings, etc. It allows a

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 3-27-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on April 1, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:
Executive Action: HB 404, HB 358, HB 451, HB 579, HB 14, HB 546, HB 141, HB 247

information. This should be provided by the law enforcement agency.

{Tape: 1; Side: B}

Vote: **The motion carried with MCGEE voting no.**

Motion: **SEN. GARY PERRY** moved that **HB 404 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. PERRY questioned how the code was being changed by the bill.

CHAIRMAN GRIMES clarified the difference is the immunity provided on page 2 for the employer who chooses to provide the information.

Vote: **The motion carried on roll call vote with CURTISS, MANGAN, PEASE, and WHEAT voting no.**

EXECUTIVE ACTION ON HB 358

Motion: **SEN. MCGEE** moved that **HB 358 BE CONCURRED IN.**

Substitute Motion: **SEN. MCGEE** moved that **HB 358 BE AMENDED, HB035804.ajm, EXHIBIT(jus69a02).**

Discussion:

SEN. MCGEE explained the amendment would change the reference to county court and inserted language that stated justice courts would be established as a court of record.

Vote: **Motion carried unanimously.**

Substitute Motion: **SEN. PERRY** moved that **HB 358 BE AMENDED, HB035803.ajm, EXHIBIT(jus69a03).**

Discussion:

SEN. PERRY noted an error in the amendment. He would delete the words "to be known as a county court". This would allow any county to be allowed to establish a court of record.

Motion/Vote: **SEN. MCGEE** moved that **HB 358 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 4-1-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

Amendments to House Bill No. 358
3rd Reading Copy

Requested by Senator Dan McGee

For the Senate Judiciary Committee

Prepared by John MacMaster
March 28, 2003 (7:39am)

1. Title, page 1, line 8.
Strike: "COUNTY COURTS"
Insert: "JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD"

2. Title, page 1, lines 9, 10, and 13.
Strike: "COUNTY COURT"
Insert: "JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD"

3. Page 1, line 25.
Page 3, lines 15 and 16.
Page 4, lines 10 and 13.
Page 5, lines 4 and 27.
Strike: "county court"
Insert: "justice's court established as a court of record"

4. Page 3, line 23.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

5. Page 6, line 25.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

6. Page 6, line 26.
Page 7, lines 3 and 5.
Strike: "county court"
Insert: "justice's court established as a court of record"

7. Page 7, line 7.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

8. Page 7, lines 8, 9, 10, and 12.
Strike: "county court"
Insert: "justice's court established as a court of ~~record~~"

SENATE JUDICIARY
Exhibit No. 2
Date 4-1-03
Bill No. HB 358

(over)

HB035804.ajm

9. Page 7, line 15.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

10. Page 7, lines 16, 20, 26, and 29.
Page 8, end of line 1 and beginning of line 2.
Strike: "county court"
Insert: "justice's court established as a court of record"

11. Page 8, lines 14 and 22.
Strike: "county court"
Insert: "court of record"

12. Page 8, line 30.
Strike: "county court"
Insert: "justice's court established as a court of record"

13. Page 9, lines 5, 6, and 7.
Strike: "county court"
Insert: "justice's court established as a court of record"

- END -

Exd

Amendments to House Bill No. 358
3rd Reading Copy

Requested by Senator Gary Perry

For the Senate Judiciary Committee

Prepared by John MacMaster
March 27, 2003 (3:21pm)

1. Title, page 1, line 6 through line 8.
Strike: "FIRST-CLASS" on line 6 through "COURTS" on line 8
Insert: "A COUNTY TO ESTABLISH A JUSTICE'S COURT AS A COURT OF RECORD TO BE KNOWN AS A COUNTY COURT"

2. Page 4, line 8.
Strike: "In" through "20,000 the"
Insert: "A"

- END -

SENATE JUDICIARY
Exhibit No. 3
Date 4-1-03
Bill No. HB 358

Amendments to House Bill No. 358
3rd Reading Copy

Requested by Senator Dan McGee

For the Senate Judiciary Committee

Prepared by
April 1, 2003 (1:09pm)

1. Title, page 1, line 6 through line 8.
Strike: "FIRST-CLASS" on line 6 through "COURTS" on line 8
Insert: "A COUNTY TO ESTABLISH A JUSTICE'S COURT AS A COURT OF RECORD"

2. Title, page 1, lines 9, 10, and 13.
Strike: "COUNTY COURT"
Insert: "JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD"

3. Page 1, line 25.
Page 3, lines 15 and 16.
Page 4, lines 10 and 13.
Page 5, lines 4 and 27.
Strike: "county court"
Insert: "justice's court established as a court of record"

4. Page 3, line 23.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

5. Page 4, line 8.
Strike: "In" through "20,000 the"
Insert: "A"

6. Page 6, line 25.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

7. Page 6, line 26.
Page 7, lines 3 and 5.
Strike: "county court"
Insert: "justice's court established as a court of record"

8. Page 7, line 7.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

9. Page 7, lines 8, 9, 10, and 12.
Strike: "county court"
Insert: "justice's court established as a court of record"

10. Page 7, line 15.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

11. Page 7, lines 16, 20, 26, and 29.
Page 8, end of line 1 and beginning of line 2.
Strike: "county court"
Insert: "justice's court established as a court of record"

12. Page 8, lines 14 and 22.
Strike: "county court"
Insert: "court of record"

13. Page 8, line 30.
Strike: "county court"
Insert: "justice's court established as a court of record"

14. Page 9, lines 5, 6, and 7.
Strike: "county court"
Insert: "justice's court established as a court of record"

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 358** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Senator Duane Grimes, Chair

To be carried by Senator Brent Cromley

And, that such amendments read:

1. Title, page 1, line 6 through line 8.
Strike: "FIRST-CLASS" on line 6 through "COURTS" on line 8
Insert: "A COUNTY TO ESTABLISH A JUSTICE'S COURT AS A COURT OF RECORD"

2. Title, page 1, lines 9, 10, and 13.
Strike: "COUNTY COURT"
Insert: "JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD"

3. Page 1, line 25.
Page 3, lines 15 and 16.
Page 4, lines 10 and 13.
Page 5, lines 4 and 27.
Strike: "county court"
Insert: "justice's court established as a court of record"

4. Page 3, line 23.
Strike: "county court"
Insert: "justice's court established as court of record"

5. Page 4, line 8.
Strike: "In" through "20,000 the"

Committee Vote:
Yes 9, No 0.

Insert: "A"

6. Page 6, line 25.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

7. Page 6, line 26.
Page 7, lines 3 and 5.
Strike: "county court"
Insert: "justice's court established as a court of record"

8. Page 7, line 7.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

9. Page 7, lines 8, 9, 10, and 12.
Strike: "county court"
Insert: "justice's court established as a court of record"

10. Page 7, line 15.
Strike: "**county court**"
Insert: "**justice's court established as court of record**"

11. Page 7, lines 16, 20, 26, and 29.
Page 8, end of line 1 and beginning of line 2.
Strike: "county court"
Insert: "justice's court established as a court of record"

12. Page 8, lines 14 and 22.
Strike: "county court"
Insert: "court of record"

13. Page 8, line 30.
Strike: "county court"
Insert: "justice's court established as a court of record"

14. Page 9, lines 5, 6, and 7.
Strike: "county court"

Insert: "justice's court established as a court of record"

- END -

2003 Montana Legislature

About Bill -- Links

HOUSE BILL NO. 358
INTRODUCED BY LANGE, NOENNIG, LASZLOFFY

AN ACT GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR MUNICIPAL COURT JUDGES; ALLOWING A COUNTY TO ESTABLISH A JUSTICE'S COURT AS A COURT OF RECORD; PROVIDING THAT THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS FROM A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE ON THE RECORD AND NOT DE NOVO; AUTHORIZING A MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD TO ACT AS A JUDGE PRO TEMPORE IN A DISTRICT COURT; PROVIDING A GRANDFATHER CLAUSE FOR EXISTING JUSTICES OF THE PEACE; AMENDING SECTIONS 3-5-114, 3-6-102, 3-6-202, 3-6-204, 3-10-101, 3-10-203, 3-10-207, 25-33-301, AND 46-17-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

(1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;

(2) a retired judge of the district court;

(3) a justice of the peace for a justice's court established as a court of record, provided for in 3-10-101;

(4) a municipal court judge; or

~~(3)~~(5) a retired justice of the supreme court."

Section 2. Section 3-6-102, MCA, is amended to read:

"3-6-102. Abolition of city court. (1) In cities in which a municipal court is established, the office of city judge is abolished.

(2) Except as provided in 3-6-101(2), a city judge whose office is abolished shall serve as a municipal court judge in the same city in which ~~he~~ the judge served as city judge for the remainder of ~~his~~ the judge's term and until the office of municipal court judge is filled by election, as provided under 3-6-201 ~~and 3-6-202~~."

Section 3. Section 3-6-202, MCA, is amended to read:

"3-6-202. Qualifications -- certification -- training. (1) A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the ~~1972~~ Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least ~~2~~ 3 years prior to the date of appointment or election.

(2) A municipal court judge ~~must be a resident and voter in the city in which he is elected at the time of his election~~ shall reside in the county in which the court is located and shall meet the residency requirements provided in 3-10-204.

~~(3) A municipal court judge must be certified as provided in 3-1-1502 or 3-1-1503 prior to assuming office.~~

~~(4) There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed municipal court judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided for in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed municipal court judge for attending the sessions by the city in which he holds or will hold court and must be charged against that city.~~

~~(5) Each municipal court judge shall attend the training sessions provided for in subsection (4). Failure to attend disqualifies a judge from office and creates a vacancy in the office. However, the supreme court may excuse a municipal court judge from attendance because of illness, a death in the family, or any other good cause.~~

(3) The commission on courts of limited jurisdiction, upon finding compliance with subsections (1) and (2), shall issue a certificate, as required in 3-1-1502, prior to the municipal court judge assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.

(4) A municipal court judge shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.

(5) Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (4).

(6) A municipal court judge is entitled to reimbursement by the city in which the judge holds or will hold court for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.

(7) On or before December 31 of each year, a municipal court judge shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a municipal court judge or declare a vacancy in the office of the judge for failure to meet the training requirements established in this section."

Section 4. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification -- judge pro tempore. When a judge of a municipal court has been disqualified or is sick or unable to act, ~~he~~ the judge shall call in a justice of the peace for a justice's court established as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or ~~some practicing~~ an attorney of the county in which ~~his~~ the court is located~~, who shall be~~ to act as a judge pro tempore. The judge pro tempore ~~with~~ has the same ~~powers for the purposes of the cause~~ power and authority as the municipal court judge ~~of the court~~."

Section 5. Section 3-10-101, MCA, is amended to read:

"3-10-101. Number and location of justices' courts -- authorization to combine with city court -- justice's court established as court of record. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice's court.

(2) The board of county commissioners of each county of the state may establish:

(a) one additional justice's court located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners

to constitute a justice's court in the city. A justice's court must be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) A county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a justice's court established as a court of record and, in addition to the provisions of this chapter, is also subject to the provisions of [sections 8 through 10]. The court's proceedings must be recorded by electronic recording or stenographic transcription and all papers filed in a proceeding must be included in the record. A justice's court established as a court of record may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

Section 6. Section 3-10-203, MCA, is amended to read:

"3-10-203. Orientation course -- annual training. (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ must be paid to the elected or appointed justice of the peace for attending the course by the county in which ~~he~~ the justice of the peace holds or will hold court and ~~shall~~ must be charged against that county.

(2) ~~There shall~~ Subject to subsection (4), there must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ must be paid to the elected or appointed justice of the peace for attending the sessions by the county in which ~~he~~ the justice of the peace holds or will hold court and ~~shall~~ must be charged against that county.

(3) ~~Each~~ Except as provided in subsection (4), each justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies ~~him~~ the justice of the peace from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

(4) A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101, must

meet the requirements provided for in [section 10]."

Section 7. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) ~~The~~ Subject to subsections (2) through (4), the board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504(1).

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

(4) The salary of the justice of the peace for a justice's court established as a court of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

Section 8. Appeal to district court from justice's court established as court of record -- record on appeal. (1) A party may appeal to district court from a justice's court established as a court of record judgment or order. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's court established as a court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals from the justice's court established as a court of record to district court.

Section 9. Disqualification of justice of peace for justice's court established as court of record -- judge pro tempore. When a justice of the peace for a justice's court established as a court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court established as a court of record, a municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in which the court is

located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice of the peace for the justice's court established as a court of record.

Section 10. Minimum judicial education requirements -- justice of peace for justice's court established as court of record. (1) The commission on courts of limited jurisdiction shall issue a certificate, as required in 3-1-1502, prior to the justice of the peace for a justice's court established as a court of record assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.

(2) A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101, shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.

(3) Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (2).

(4) A justice of the peace for a justice's court established as a court of record is entitled to reimbursement by the county in which the justice of the peace holds or will hold court for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.

(5) On or before December 31 of each year, a justice of the peace for a justice's court established as a court of record shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a justice of the peace for a justice's court established as a court of record or declare a vacancy in the office of the justice of the peace for failure to meet the training requirements established in this section.

Section 11. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo -- pleadings; -- conduct of trial. (1) ~~All~~ Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on ~~such~~ terms ~~as may be~~ that are just, ~~allow~~ allows other or amended pleadings to be filed in ~~such~~ the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the

district court.

(3) The appeal from a justice's court established as a court of record pursuant to 3-10-101 is on the record as provided in [section 8]."

Section 12. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a court of record is governed by [section 8].

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice's court, other than a justice's court established as a court of record, or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure."

Section 13. Grandfather clause. An incumbent justice of the peace on [the effective date of this act], in a county in which a justice's court established as a court of record is established, who meets the minimum education requirements for a justice of the peace is eligible to run for the justice of the peace for a justice's court established as a court of record in that county at the next and subsequent elections held for the justice of the peace for the justice's court established as a court of record unless the justice of the peace has a break in service.

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Codification instruction. [Sections 8 through 10] are intended to be codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [sections 8 through 10].

Section 16. Effective date. [This act] is effective July 1, 2003.

- END -

Latest Version of HB 358 *(HB0358.ENR)*

Processed for the Web on April 11, 2003 (7:27am)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the status of this bill for the bill's primary sponsor.

Status of this Bill | 2003 Legislature | Leg. Branch Home

This bill in WP 5.1 | All versions of all bills in WP 5.1

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